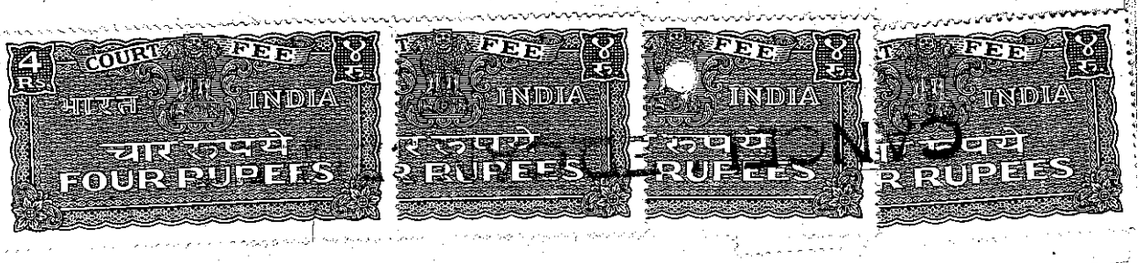

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

W.P. No 3874 of 1998.

Petitioner : - Executive Engineer,
M.P. Housing Board, Sub Division No.1
DURG (M. P)

.v e r s u s .

Respondents :- 1. Presiding Officer
Labour Court, Durg.

2. Rohitlal, r/o village
Charmudia Post- Charmudia
Tahsil Dhamtari, Distt Raipur

3. Deputy Labour Commissioner,
Raipur

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

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(56)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3874 of 1998

Petitioner : Executive Engineer, M.P. Housing Board

Versus

Respondents : Presiding Officer & others

Post for order on 20th April, 2006.

Sd/-
Satish K. Agnihotri
Judge
19.4.2006

HIGH COURT OF CHHATTISGARH AT BILASPUR
Writ Petition No. 3874 of 1998

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Petitioner : Executive Engineer, M.P. Housing Board

Versus

Respondents : Presiding Officer & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Sanjay Patel, counsel for the Petitioner.

Shri H.B. Agrawal, Senior counsel with Shri Pankaj Agrawal, counsel for the respondent No. 2.

None for the respondents No. 1 and 3.

ORDER

(20th April, 2006)

1. The present petition filed under Article 227 of the Constitution of India impugns the award dated 2.3.1998 passed by the Labour Court in Case No.31/I.D. Act/93 (Ref.).

2. The facts in nutshell are that the respondent No. 2/employee raised the industrial dispute in regard to the termination order dated May, 1983 before the respondent No. 3. The respondent No. 3 by his order dated 9.11.1993 (Annexure P/1) referred the dispute to the Labour Court under Section 10 (1) of the Industrial Disputes Act, 1947 to the following effect:-

> "Whether termination of service of Rohit Lal was legal and valid, if no, the employee is entitled to which relief and in this regard what direction can be issued to the employer."?

3. The Labour Court, by its order dated 20.1.1998, which was pronounced in the open court on 2.3.1998, came to the conclusion that the petitioner has worked during the period 1982-83 before the termination order was passed in May, 1983.

The Labour Court further came to the conclusion that the termination of the service of the respondent No. 2 amounts to retrenchment and the order of retrenchment without payment of retrenchment compensation under the provisions of the Industrial Disputes Act, 1947 was invalid and improper. Accordingly, the petitioner was directed to reinstate the respondent No. 2 in service with 50% back wages.

4. The petitioner/employer filed this petition impugning the award passed by the Labour Court on the ground that the finding recorded by the Labour Court was based on conjecture and surmises. The respondent No. 2/employee has not produced sufficient material to reach to the finding that he had worked for 240 days in a year and further that the Labour Court has not considered delay in raising the dispute. It was further urged that the provisions of Section 25-F of the Industrial Disputes Act are not applicable to the facts of the present case as the respondent No.2/employee was employed on daily wages basis.

5. Shri Sanjay Patel, learned counsel appearing for the petitioner submitted that the impugned award was perverse and illegal on the ground that the Labour Court has drawn adverse inference against the employer on the basis of statement made by the respondent No. 2/employee. It was further contended that the question of delay was raised in the reply to the statement of the claim, but the same was not considered and decided by the Labour Court.

6. Shri H.B. Agrawal, learned Senior counsel with Shri Pankaj Agrawal, learned counsel appearing for the respondent No. 2 submitted, per contra, that the respondent No. 2/employee has discharged his burden to prove that he has worked from February, 82 to till May, 83 regularly. The respondent No.2/employee has examined witness Dasru Ram to prove that

the respondent No. 2/employee worked during that period as Peon in the Office of the Property Manager of the Petitioner Housing Board. The witness has supported the case of the respondent No.2/employee. The petitioner/employer has not produced any evidence, despite the order dated 15.7.1997 of the Labour Court to produce attendance register, muster roll, payment register and paid muster. The employer/management has not produced any document and has not further examined any witness in support of its case. On the question of delay, it was contended that the Labour Court has considered and accordingly moulded the relief by granting 50% back wages.

7. Having heard learned counsel for the parties and having perused pleadings and other documents annexed to the pleadings, it is indisputably established that the respondent No. 2/employee has specifically raised the issue of working for 240 days and the same has been proved by examining a co-worker who has categorically supported the case of the respondent No. 2/employee. On the contrary, the petitioner/employer, despite several opportunities granted by the Labour Court, has failed to produce relevant documents to rebut the statement of the petitioner as well as deposition of the respondent No. 2's witness. The petitioner/employer has further not attempted to contradict or cross examine the employees' witness.

8. In the case of **Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another**[1], the Supreme Court observed as under:-

> "9. In Jai Bhagwan v. Ambala Central Coop. Bank Ltd.[7] this Court declined to set aside the order of reinstatement of the workman who was shown to have approached the

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[1]{(1999) 6 Supreme Court Cases 82}

Court after a prolonged delay. However, in the circumstances of the case, the Court directed the workman to be reinstated in service with continuity from the date on which his services were terminated but having regard to the fact that he had raised the industrial dispute after a considerable delay without doing anything in the meanwhile, he was not awarded the back wages. The grant of half back wages from the date of termination of service until the date of order and full back wages from that date till his reinstatement was found in the circumstances to meet the ends of justice. In H.M.T. Ltd. v. Labour Court[8] where there was a delay of 14 years in invoking the jurisdiction of the court, this Court found that instead of full back wages, the grant of 60 per cent of the back wages upon the reinstatement of the workman would meet the ends of justice.

10. It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent management on the Full Bench judgment of the Punjab and Haryana High Court in Ram Chander Morya v. State of Haryana[9] is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to in such cases". However, it went on further to say that

"reasonable time in the cases of labour for demand of reference or dispute by appropriate Government of labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay".

9. In the case of **Mahavir Singh Vs. U.P. State Electricity Board and others**[2], the Supreme Court observed as under :-

"3. Once the termination is held to be illegal, we fail to appreciate how the entire reference could have been rejected. The dispute lingered on for a number of years. That would not mean that the dispute had ceased to exist. It is, of course, true that belatedly the dispute was raised but that has been taken care of by the Labour Court by not awarding full back wages but only 50% of the back wages all throughout from the date of termination till reinstatement. Such order as passed by the Labour Court could not be said to be in any way uncalled for and illegal."

10. In the case of **U.P. State Electricity Board Vs. Rajesh Kumar**[3], the Supreme Court observed as under :-

"5. It is also not disputed by the learned counsel for the parties that there is no period of limitation as is prescribed for the parties in making the reference. The facts and circumstances of each case are to be considered in dealing with the stale claims and appropriate reliefs are to be granted....."

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[2]{(1999) 9 Supreme Court Cases 178}

[3]{(2003) 12 Supreme Court Cases 548}

11. In the case of **S.M. Nilajkar and others Vs. Telecom District Manager, Karntaka**[4], the Supreme Court observed as under :-

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in Shalimar Works Ltd. v. Workmen[4] that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefore. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of most of the old workmen was held to be fatal in Shalimar Works Ltd. v. Workmen[4]. In Nedungadi Bank Ltd. v. K.P. Madhavankutty[6] a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In Ratan Chandra Sammanta v. Union of India[5] it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants to any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Labour v. Union of India[1] the Department was formulating a scheme to accommodate casual labourers ant the appellants were justified in awaiting the outcome thereof.

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[4] {(2003) 4 Supreme Court Cases 27}

On 16-1-1990 they were refused to be accommodated in the Scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay.

18. The fact remains that there was delay, though not a fatal one, in initiating proceedings calculating the time between the date of termination and initiation of proceedings before the Industrial Tribunal-cum-Labour Court. The employee cannot be blamed for the delay. The learned Single Judge has denied the relief of back wages while directing the appellants to be reinstated. That appears to be a just and reasonable order. Moreover, the judgment of the learned Single Judge was not put in issue by the appellants by filing an appeal."

12. In the case of **Shahaji Vs. Executive Engineer, PWD**, the Supreme Court observed as under :-

"6. We have heard counsel for the parties and we have also been taken through the judgments of this Court reported in Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service[1], Nedungadi Bank Ltd. v. K.P. Madhavankutty[2] and Sapan Kumar Pandit v. U.P. SEB[3]. Having gone through the judgments we have no doubt that the judgment of this Court in Ajaib Singh case[1] lays down the law correctly. In the instant case there was no ground of delay urged by the management. Moreover, even if there was delay in making the reference to the Labour Court, if it came to the conclusion that the termination was illegal, it could have suitably moulded the relief to be granted to the workman in view of the delay. In such cases the award of back wages may either be not permitted or curtailed. In Nedungadi Bank Case[2] what was challenged before the High Court was the order making the reference. That was not a case where the

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[5]{(2005) 12 Supreme Court Cases 141}

Labour Court refused to entertain the dispute on the ground of delay. Having regard to the clear position in law we are left with no option but to allow this appeal and set aside the judgment and order of the High Court."

13. Learned counsel for the petitioner has cited the decision of the Supreme Court in **M.P. Electricity Board Vs. Hariram etc.**[6], wherein the Supreme Court held as under :-

> ".....In such a factual background, in our opinion, the Industrial Court or the High Court could not have drawn an adverse inference for the non-production of the Muster Rolls for the year 1990 to 1992 in the absence to specific pleading by the respondents-applicants that at least during that period they had worked for 240 days continuously in a given year. The application calling for the production of the documents was for the years 1987 to 1992. As stated above, between the period 1987 to 1990, as a matter of fact, till end of the year 1990 the respondents have not been able to establish the case of continuous work for 240 days. Considering these facts in our view drawing of an adverse inference for the non-production of the Muster Rolls for the years 1991-92, is wholly erroneous on the part of the Industrial Court and the High Court. We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the applicants-respondents."

14. In the present case, the Labour Court, it appears has not established the fact that the respondent No. 2/employee had worked for 240 days continuously in a given year on the basis of adverse inference drawn from non-production of documents, despite the court's order, this fact has been established independently on the basis of the statement made by the

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[6]2004 AIR SCW 5476

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respondent No. 2/employee supported by deposition of other co-worker which stands uncontroverted. Accordingly, the decision of the Supreme Court in M.P. Electricity Board's case (Supra) is not applicable to the facts of the present case.

15. On perusal of the above stated decisions of the Supreme Court, it is clear that the relief cannot be denied to the workman merely on the ground of delay when the impugned order of termination was found illegal. The delay in raising the dispute can be taken care of, while awarding back wages. In the present case, the Labour Court has awarded reinstatement with 50% back wages. It appears from perusal of the impugned order that the Labour Court has not considered the question of delay, while awarding 50% back wages. It is a case where the respondent No. 2/employee was employed on daily wages basis and as such the respondent No. 2/employee cannot be granted back wages for the period when he has not worked and the respondent No. 2/employee has raised the dispute after a period of 10 years.

16. In the facts and circumstances of the case, the respondent No. 2/employee is not entitled to any back wages. However, the respondent No. 2/employee will be entitled to payment of his salary w.e.f. the date of the order passed by the Labour Court i.e. 2.3.1998. Learned counsel for the respondent No. 2 submits that the respondent No. 2/employee was paid last wages drawn on reinstatement. The respondent No. 2/employee is entitled to wages as admissible and payable at the time of reinstatement, thereafter revised from time to time. Accordingly, the petitioner is directed to make the payment of difference of wages from the date, impugned award was passed.

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17. For the reasons stated-above, this petition is partly allowed to the above extent as grant of 50% back wages is set aside. Remaining part of the order for reinstating the respondent No. 2/employee in service is confirmed. No order as to costs.

Bablu

Sd/-
Satish K. Agnihotri
Judge